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No. 98-1036

Supreme Court, U.S.
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In The
Supreme Court of the United States

October Term, 1998

THE PEOPLE OF THE STATE OF ILLINOIS
Petitioner,

vs.

SAM WARDLOW
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF ILLINOIS

BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., JOINED BY THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., THE NATIONAL SHERIFFS' ASSOCIATION, AND THE ILLINOIS ASSOCIATION OF CHIEFS OF POLICE IN SUPPORT OF THE PETITIONER.

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BRIEF OF *AMICI CURIAE*

This brief is filed pursuant to Rule 37 of the United States Supreme Court. Consent to file has been granted by respective Counsel for the Petitioner and Respondent. The letters of consent have been filed with the Clerk of this Court, as required by the Rules.[1]

INTEREST OF *AMICI CURIAE*

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interes ed in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties, and property, within the framework of the various state and federal constitutions.

AELE has previously appeared as *amicus curiae* over 100 times in the Supreme Court of the United States and over 35 times in other courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio, and Missouri.

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[1] As required by Rule 37.6 of the United States Supreme Court, the following disclosure is made: This brief was authored for the *amici* by James P. Manak, Esq., counsel of record, and Wayne W. Schmidt, Esq., Executive Director of Americans for Effective Law Enforcement, Inc. No other persons authored this brief. Americans for Effective Law Enforcement, Inc., made the complete monetary contribution to the preparation and submission of this brief, without financial support from any source, directly or indirectly.

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world. Founded in 1893, the IACP, with more than 17,000 members in 112 countries, is the world's oldest and largest association of police executives. IACP's mission, throughout the history of the association, has been to identify, address, and provide solutions to urgent law enforcement issues.

The National Sheriffs' Association (NSA), is the largest organization of sheriffs and jail administrators in America, consisting of over 40,000 members. It conducts programs of training, publications, and related educational efforts to raise the standard of professionalism among the nation's sheriffs and jail administrators. While it is interested in the effective administration of justice in America, it strives to achieve this while respecting the rights guaranteed to all under the Constitution.

The Illinois Association of Chiefs of Police, represents law enforcement executives and administrators in the State of Illinois. It actively engages in training programs and publications for Illinois law enforcement officers, as well as *amicus curiae* advocacy in cases critical to law enforcement interests in the state.

Amici are national and state professional associations representing the interests of law enforcement agencies at the state and local levels. Our members include: (1) law enforcement officers and law enforcement administrators who are charged with the responsibility of overseeing the process of investigative stops of individuals based upon reasonable suspicion within the bounds of the law; and (2) police legal advisors who, in their criminal jurisdiction capacity, are called upon to advise law enforcement officers and administrators in connection with such matters, including the formulation and implementation of policy on the subject.

Because of the relationship with our members, and the composition of our membership and directors—including active law enforcement administrators and counsel—we possess direct knowledge of the impact of the ruling of the court below, and we wish to impart that knowledge to this Court.

STATEMENT OF THE CASE

The court below, *People v. Wardlow*, 183 Ill. 2d 306 (1998), ruled in a case of first impression for it that a person's sudden flight upon seeing the police in a high-crime area does not, by itself, justify an investigatory stop under *Terry v. Ohio*, 392 U.S. 1 (1968).

It held that the defendant's presence in an area with a high incidence of narcotics trafficking and his flight upon the approach of a police vehicle patrolling the area did not justify his investigatory stop.

SUMMARY OF ARGUMENT

Based on our experience as law enforcement practitioners and administrators at the state and national levels, *amici* believe that the better-reasoned view is that flight from a law enforcement officer in a high crime rate area constitutes reasonable suspicion under *Terry v. Ohio* for an investigative stop. AELE originally filed an *amicus curiae* brief in *Terry*, arguing for a common sense approach to police investigation of suspicious circumstances. Joined by other law enforcement organizations, we now submit that the time is ripe for this Court to

apply *Terry* to one of the most common events in law enforcement practice today.

Our position grows out of a concern that the ruling of the court below—if affirmed—would leave the residents of our inner cities defenseless in the face of burgeoning criminal activity largely centered around the scourge of the drug trade. Our inner cities have been turned into vast prisons for the innocent who reside there, powerless to deal with the flood of drug dealers and other criminals who prey upon them. Refusal of the courts to recognize a reasonable, common sense application of *Terry* to the type of activity involved in this case can only worsen this condition, as well as retarding progressive movements such as community policing designed to assist these communities.

We ask this Court to return to the roots of *Terry*, which *amicus* AELE supported by pointing out the common law origin of police investigative powers, and hold that flight from the police in a high crime rate area permits an investigatory detention. **The ruling we seek is not an extension of the rule of *Terry*, but what we submit is implicit in its holding.**

ARGUMENT

FLIGHT OF AN INDIVIDUAL FROM A POLICE OFFICER IN A HIGH-CRIME AREA UPON MAKING EYE CONTACT WITH THE OFFICER CONSTITUTES REASONABLE SUSPICION FOR AN INVESTIGATIVE DETENTION UNDER *TERRY v. OHIO*.

The testimony of police officer Nolan (R. A8, A9) established that he and his fellow officers were assigned to investigate narcotics sales in various areas of the City of Chicago by patrolling these areas. His testimony also

established that the area in which defendant was found was one of those areas being patrolled by the officers because it was an area where there was a high incidence of narcotic sales.

The record further established that officer Nolan's car, which was passing in front of the defendant who was on a sidewalk, was the last car in a four car "caravan" that contained a total of eight officers. (R. A9, A10.) At the time officer Nolan was dressed in his full police uniform which included his police badge, name tag and a Chicago Police Department patch on his arm. (R. A11.) When defendant looked at officer Nolan and his partner, he started to run. (R. A6, A10.)

Defendant fled upon the approach of the police vehicle and upon seeing the police officers. The officers followed defendant in their car, with officer Nolan noticing that defendant was carrying a white opaque bag under his arm. Officer Nolan exited his car and stopped defendant. He immediately conducted a protective pat-down search of defendant, felt a hard object in the bag similar to the shape of a handgun, and seized a loaded handgun from the bag. (R. A12.)

Amici will not repeat the case law development of the court below and the parties indicating a split among the state and federal courts on the issue of whether flight from a police officer is sufficient for a *Terry* investigative stop. *See also*, cases collected at 4 LaFave, Search And Seizure, § 9.4(f) at 176-182 (3d ed. 1996). However, the language of one such case supporting the position favoring reasonable suspicion bears repeating here:

> Flight at the sight of police is undeniably suspicious behavior. Although many innocent explanations could be hypothesized as the reason

> for the flight, a reasonable police officer who is charged with enforcing the law as well as maintaining peace and order cannot ignore the inference that criminal activity may well be afoot. Although it does not rise to a level of probable cause, flight at the sight of a police officer certainly gives rise to a reasonable suspicion that all is not well.

State v. Anderson, 454 N.W.2d 763, 766 (Wis. 1990).

Amici believe that this line of reasoning, which constitutes the better-reasoned view in the jurisdictions, represents a common sense viewpoint. We also recognize that enforcement activities such as took place in this case often occur in minority neighborhoods where crime rates are high. The neighborhood involved in this case is such a neighborhood.

Often the police may be mistrusted by some citizens in such neighborhoods and a few innocent persons may resent the inconvenience of a police contact. A small number of police officers may even have abused their powers under *Terry v. Ohio* to conduct investigative stops in an improper manner. In spite of our best efforts to prevent this, such abuse by a handful may happen from time-to-time.

We must recognize, however, that our best efforts of training, supervision, and discipline of police officers will not be entirely successful. However, as AELE pointed out in its *amicus curiae* brief filed in *Terry v. Ohio*, p. 16, even if some police officers abuse their powers that does not mean "that the *proper* exercise of such power should therefore be declared unconstitutional."

Indeed, looking at the facts that officer Nolan was faced with in the present case—where there was no question of improper motive or conduct on his part—if the officer had

not stopped the defendant it could be said that "[i]t would be poor police work indeed for an officer . . . to have failed to investigate further." *Terry*, 392 U.S. at 23. The fact that some officers abuse their powers does not change this, and honest police officers—who represent the majority—will not understand why a plainclothes officer could confront the defendant in *Terry* who was loitering in front of a jewelry store, but a uniformed officer could not confront the defendant in this case when he ran immediately upon seeing the officer.

This case raises the troublesome question of whether the police should withdraw from high crime rate areas simply because they are more likely to confront minorities. It is a fact that crime exists in some areas of our cities where minorities live. It is a fact that the police concentrate their efforts in high crime rate areas. They do so to protect the honest, law-abiding citizens who live in those areas. We do not believe that the police should abandon them and concentrate their protective efforts only in more affluent neighborhoods. In order to protect all of our citizens the police cannot close their eyes to the obvious as represented by the furtive actions of the defendant in this case.

The "obvious" is that "[f]light is circumstantial evidence of guilt; . . .," *Green v. State*, 206 Ga. App. 42, 424 S.E.2d 646, 649 (1992), and "undeniably suspicious behavior," *Platt v. State*, 589 N.E.2d 222, 226 (Ind. 1992). The Fourth Amendment does not require a policeman who has reasonable suspicion of criminal activity to simply shrug his shoulders and let a fleeing suspect disappear into the night. *Amici* would not expect the officers we advise to do so in the area involved in the present case anymore than if the action had taken place in an affluent suburb. As noted in *United States v. Pope*:

> Appellant's flight in the face of a clear showing of lawful authority supplied the agent with grounds to reasonably suspect that Appellant was engaged in criminal activity. *Flight invites pursuit and colors conduct which hitherto has appeared innocent* . . . [F]light from a clearly identified law enforcement officer may furnish sufficient ground for a limited investigative stop.

United States v. Pope, 561 F.2d 663, 668-669 (6th Cir. 1977) (emphasis added).

Amici know from our experience with community-based policing and direct contacts with the citizens our constituents serve, that law-abiding residents of our inner cities want skilled police officers to apply their training and expertise to make their streets safe. These citizens would undoubtedly think it to be the opposite of common sense and reasonableness to not investigate activity similar to that which took place in this case. Indeed, they would be highly critical of an officer who did *not* do what officer Nolan did in this case. They would echo the words of this Court in *Terry v. Ohio* quoted above. They would undoubtedly express that view at the many community-based policing meetings and other contacts made with municipal officials in their neighborhood.

Amici submit that our minority citizens would feel abandoned by the police who would ignore such obvious signs of suspicious behavior in their streets, especially in view of the fact that police officers are trained to recognize and do recognize the difference between innocent and suspicious behavior. We doubt that community policing will work if common sense and reasonableness—the touchstones of the Fourth Amendment—are not applied.

We believe that the framers of our Bill of Rights intended it to apply to all of our citizens, including those who live in high crime rate areas. *Amici* submit that the work of officer Nolan in this case fully comported with the requirements of *Terry v. Ohio*, was reasonable within the meaning of the Fourth Amendment, was a laudatory example of effective law enforcement, and was a significant benefit to the law-abiding community he serves.

CONCLUSION

Amici urge this Court to reverse the decision of the court below on the basis of the precedents of this Court and sound judicial policy.

Respectfully submitted,

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